**Comments on the Draft revised General Comment No. 10 (2007) on children’s rights in juvenile justice**

Submission made on behalf of the Child Rights International Network (CRIN) in January 2019

CRIN supports the comments submitted jointly to which it is a signatory, particularly with regards to the recommendations on life imprisonment, children in the context of counter-terrorism and the privacy of children in the criminal justice system. This additional submission focuses on the aspects of draft revised General Comment that address the minimum age of criminal responsibility.

CRIN welcomes the development of the General Comment in relation to the minimum age of criminal responsibility (MACR), particularly the clear recommendation against lowering the age. However, we are concerned that the recommendation of a specific age, albeit significantly higher than that within the original General Comment No. 10, risks unintended consequences and misuse.

First, the explicit inclusion of an age to which States should raise their MACR effectively establishes a baseline that may become out of date as best practice evolves. This was the case with the original text of General Comment 10, where the age 12 was identified, but is now considered low within the children’s rights and juvenile justice communities. While the Committee has developed its approach to the MACR during State reviews, urging States to raise the MACRs beyond this level,[[1]](#footnote-1) the evolution of standards by the Committee in this manner does not have the visibility and broader application of a general comment.

Second, the identification of a specific age considered acceptable may remove the incentive for States to continue to raise standards further. States that have established a MACR at the level recommended by the Committee may consider that they have fulfilled their obligation and cease to pursue further reform. This approach has been visible in a number of States that have considered raising their MACR. In Scotland, for example, when the government published a consultation document collecting input on whether to raise the MACR, the consultation document selectively quoted the paragraph of General Comment No. 10 to indicate that the Committee “has suggested that 12 years old should be regarded as the minimum internationally acceptable age of criminal responsibility”,[[2]](#footnote-2) leaving aside further recommendations within the General Comment for States to raise the age beyond this level.

Similarly in Australia’s Northern Territory, the Royal Commission into the Protection and Detention of Children in the Northern Territory made a recommendation to raise the minimum age of criminal responsibility to 12 in its findings, again citing the sections of General Comment No. 10 that refer to the age of 12, without addressing reference to the recommendation to raise the MACR beyond this level.[[3]](#footnote-3)

Finally, despite the Committee’s clear language that it is not acceptable to lower the age of criminal responsibility if set higher than this limit, States may also adopt the argument that where other States have lower ages and this is considered compatible with the Convention, they too should be able to adopt the same age. In States that have brought forward proposals to lower the minimum age of criminal responsibility, we have commonly encountered the selective quotation of General Comment No. 10 and comparisons with lower MACRs adopted in other jurisdictions to justify reduced standards.

**Recommendations**

CRIN urges the Committee to avoid including a specific recommended minimum age of criminal responsibility within the General Comment, instead encouraging States to progressively raise the minimum age of criminal responsibility towards 18. The intention of this language is to encourage the continuous improvement of standards within the criminal justice system for children.

If the Committee felt that it is necessary to include an age within the recommendation, however, as an indication of the level that States should consider when reforming their laws, CRIN would recommend rephrasing paragraph 33 to include:

“A minimum age of criminal responsibility below 14 is too low. The Committee recommends that States raise the age beyond this level.”

The shift in language from recommending States adopt a particular age, to stating that lower ages are unambiguously incompatible with the Convention would help avoid misinterpretation and misuse of the General Comment and recognise the potential for improved standards.

1. See, for example, CRC/C/IDN/CO/3-4, paras. 77 and 78; CRC/C/MLT/CO/2, para. 66. [↑](#footnote-ref-1)
2. Report of the Advisory Group on the Minimum Age of Criminal Responsibility, Para. 2. [↑](#footnote-ref-2)
3. Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Volume 2B, p. 417. Available at: <https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-2B.pdf>. [↑](#footnote-ref-3)